



City of Carlsbad

Planning Department

May 26, 2009

Gwen Huff
California Department of Water Resources
Office of Water Use Efficiency and Transfers
P.O. Box 942836
Sacramento, CA 94236-0001

RE: COMMENTS ON PROPOSED MODIFICATIONS TO THE REGULATION (MODEL WATER EFFICIENT LANDSCAPE ORDINANCE)

Dear Ms. Huff,

This letter is in response to the Notice of 2nd 15-day Comment Period for the Proposed Modifications to the Regulation (Model Water Efficient Landscape Ordinance (MWELO)). The 2nd Notice of Modifications provided the City of Carlsbad (City) and other parties with 15 days to review and comment on the proposed modifications to the MWELO.

After reviewing the modified MWELO, the City maintains concerns addressed in our original correspondences which were transmitted in response to the original Notice of Proposed Rulemaking (NPR), as well as in response to the Notice of Modifications to the Proposed Regulation. The City does not believe that the modified MWELO sufficiently addresses all concerns raised by other parties and by the City in our March 27, 2008 and December 30, 2008 correspondences. Such concerns pertain to stringent landscaping review criteria and auditing requirements proposed by the California Department of Water Resources (DWR). Concerns previously raised, for which DWR has not sufficiently addressed, include the following:

- Landscapes using primarily reclaimed water should be exempted from regulation by the MWELO. Reclaimed water is not a valuable or limited resource in the same sense as potable water; therefore, regulation of reclaimed water by the MWELO is not consistent with the purpose and intent of the MWELO and Water Conservation in Landscape Act.
- According to the modified text of the proposed regulation, overhead irrigation is not permitted within 24 inches of any non-permeable surface. According to the MWELO, only drip, dripper line and other low flow non-spray irrigation systems would be allowed within the 24 inch setback. This regulation should be eliminated from the MWELO because its apparent intent is to address non-point source pollution and prevent excessive storm water discharge—aspects that are currently regulated by other legislation such as the Clean Water Act.
- The proposed threshold increase for homeowner-installed or provided landscapes from 2,500 square feet to 5,000 square feet should be clarified to ensure consistent and equitable



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applicability of the revised ordinance. Additional specificity should be included in the model ordinance to clarify how this regulation would be implemented by local agencies/water purveyors. If a property owner develops a single-family residence on a single lot which has a landscape area between 2,500 and 5,000 square feet and the property owner has intent to sell the property, ambiguity exists as to whether this property owner be considered a homeowner or developer for the purposes of implementing the MWELO. The City recommends that the term "homeowner" be defined by the MWELO or that all thresholds for auditing requirements be increased to 5,000 square feet for homeowner or developer installed landscaping.

- Public parks including golf courses should reduce water consumption where possible, but not be subject to water allowances and auditing requirements because they serve more functional rather than aesthetic purposes. Public park turf areas are critical to the quality of life for those who live, work and play in the state of California. Sports, open play, green space and other recreational areas that utilize turf, particularly in urban areas, are proven to promote health and reduce crime. Additionally, according to the modified/proposed MWELO, a higher Maximum Applied Water Allowance (MAWA) would be applied to recreational areas, the term "recreational area" is not sufficiently defined based on references to recreational areas only accommodating "active play." The City recommends that the term "active play" be elaborated or the definition of recreational area is expanded/modified.
- Ambiguity exists within Section 492.5 of the proposed regulation, which would require the submittal of a Soil Management Plan. Accordingly, a soil management plan "shall" be required to be submitted; however, components of the soil management plan "may" be submitted by the applicant. It is recommended that DWR clarify the components that establish an adequate soil management plan.

In addition to concerns raised by those commenting during the initial 45-day and subsequent 34-day public comment periods, the City of Carlsbad offers the following comments in response to the Notice of 2nd 15-day Comment Period for the Proposed Modifications to the Regulation:

- A recent revision to the ordinance includes a definition for the term "invasive plants species," which is defined as a, "species of plants that have a tendency to colonize open spaces, riparian corridors and other sensitive habitats." However, it is also true that non-invasive plants species have a tendency to colonize open spaces, riparian corridors and other sensitive habitats; thus the definition lacks in clear application. The City recommends that DWR utilize a definition similar to that recognized by the American Society of Landscape Architects (ASLA). ASLA defines an "invasive plant," as a "species that has become a weed pest; a plant that grows aggressively, spreads rampantly and displaces native plants."
- Recently added language in the ordinance reads, "(b) Restrictions regarding overspray may be modified if: (1) the landscape area is adjacent to permeable surfacing and no overspray or runoff occurs; or (2) the adjacent non-permeable surfaces are designed and constructed to drain entirely to landscaping." This regulation is unclear and fails to establish which agency/party has the authority to modify the restrictions. Since the local agency is responsible for establishing an ordinance that is as effective as the MWELO (or be subject to regulations established by the

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MWELO), does the local agency maintain the authority to modify these restrictions? Additionally, the MWELO fails to establish a process to modify these restrictions and further fails to establish conditions under which such regulations may be modified. It is recommended that this revision to the ordinance is clarified to include additional specificity.

Thank you for your consideration of these comments and for providing us with the opportunity to review the additional drafted changes. Please direct all future notifications on this matter to the City of Carlsbad Planning Department (Attention: Don Neu, Planning Director), 1635 Faraday Avenue, Carlsbad, CA 92008-7314.

Sincerely,



DAVID DE CORDOVA

Principal Planner

City of Carlsbad

c: Gary Barberio, Assistant Planning Director
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